

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: April 1, 2008

Consent    Regular  
 Ordinance    Public Hearing

Department:

Submitted By: Engineering & Public Works Department

Submitted For: Traffic Division

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: The third amendment to Agreement R2004-1620, for professional consulting services with Kimley-Horn and Associates, approved on July 13, 2004.

**Summary:** This Agreement provides for professional services to develop a database showing the traffic from all approved unbuilt projects Countywide (Project). This Amendment will extend the date for completion of the work from July 31, 2007 to March 31, 2008 and reallocate budget amounts between Labor Task H and reimbursable expenses to better match actual Project effort and expenses.

**District:** Countywide (LB)

**Background and Justification:** The development of the Project, which covers the entire roadway system and then publishes this information to the web, has proven to be more difficult than expected. It has required more time and effort than originally contemplated, postponing completion and increasing the labor cost. However, it has also relied on electronic submittals and virtual meetings to a much greater extent, reducing the actual reimbursable expenses incurred by the consultant.

This Amendment will provide for a time extension to allow for completion of the Project and will authorize an increase of \$15,098.76 in the budgeted amount for Labor Task H and a reduction of the same amount (\$15,098.76) for reimbursable expenses. The total budgeted amount for this contract (i.e., labor and reimbursable expenses) will not change.

**Attachments:**

1. Agreements (2)
2. Original Agreement R2004-1620, including Scope of Work and Fee Schedule
3. First Amendment to Agreement - R2006-0957
4. Second Amendment to Agreement - 2007-1055
5. Letter from Consultant requesting Third Contract Amendment

Recommended by: Dan Mesby  
Division Director

03/05/08 *Amulo*  
Date

Approved by: By T. Webb  
County Engineer

03/11/08  
Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

| Fiscal Years             | 2008          | 2009       | 2010       | 2011       | 2012       |
|--------------------------|---------------|------------|------------|------------|------------|
| Capital Expenditures     | \$ -0-        | -0-        | -0-        | -0-        | -0-        |
| Operating Costs          | -0-           | -0-        | -0-        | -0-        | -0-        |
| External Revenues        | -0-           | -0-        | -0-        | -0-        | -0-        |
| Program Income (County)  | -0-           | -0-        | -0-        | -0-        | -0-        |
| In-Kind Match (County)   | -0-           | -0-        | -0-        | -0-        | -0-        |
| <b>NET FISCAL IMPACT</b> | <b>\$ -0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> | <b>-0-</b> |

# ADDITIONAL FTE  
POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
Budget Acct No.: Fund \_\_\_ Dept. \_\_\_ Unit \_\_\_ Object  
Program

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

This item has no additional fiscal impact.

C. Departmental Fiscal Review: R.D. Ward 4/13/08

## III. REVIEW COMMENTS

### A. OFMB Fiscal and/or Contract Dev. and Control Comments:

*The total contract amount, \$288,276.59, has not changed.*

atwillwhite 3-17-08  
OFMB  
3/14/08 SW 3/13/08 CW 3/12/08

Ann J. Jacoby 3/17/08  
Contract Dev. and Control  
3/17/08

### B. Approved as to Form and Legal Sufficiency:

[Signature]  
Assistant County Attorney

This amendment complies with our review requirements.

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

**THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL  
ENGINEERING SERVICES BETWEEN  
PALM BEACH COUNTY AND KIMLEY-HORN AND ASSOCIATES,  
INC.**

This Third Amendment to Agreement for Professional Engineering Services is made as of \_\_\_\_\_, between Palm Beach County, Florida, a political subdivision of the State of Florida (hereinafter County), and Kimley-Horn and Associates, Inc., an engineering firm having an office and a place of business at 4431 Embarcadero Drive, West Palm Beach, Florida 33407 (hereinafter Consultant), and having Federal Tax ID # 56-0885615.

**RECITALS**

**WHEREAS**, the County and Consultant entered into an Agreement for Professional Engineering Services (hereinafter Contract) on July 13, 2004 (R2004 1620) to provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County; and

**WHEREAS**, on June 6, 2006 the County approved the First Amendment to that Contract (R2006-0957) to extend the completion date to July 31, 2006, and

**WHEREAS**, on July 10, 2007 the County approved a Second Amendment to that Contract (R2007-1055) to extend the completion date to July 31, 2007, and

**WHEREAS**, the County and Consultant desire to further amend the completion date of that Contract to allow work to continue until March 31, 2008, and

**WHEREAS**, the County and Consultant desire to further amend the Contract to allow reallocation of costs between Labor Task H and Reimbursable Expenses.

**NOW, THEREFORE**, in consideration of their mutual covenants contained herein, the County and Consultant hereby agree to amend the Contract as follows:

**Article 1.** Section 3.1 of the Contract, regarding periods of service, is hereby amended to change the completion date from July 31, 2007 to March 31, 2008.

**Article 2.** Section 4.1.1 of the Contract, regarding payments to consultant, is hereby amended to change the total labor fee from \$264,000 to \$279,098.76.

**Article 3.** Exhibit B of the Contract, regarding the fee schedule, is hereby amended to change the labor fee for Task H from \$58,400.00 to \$73,498.76, to change the total labor fee from \$264,000 to \$279,098.76, and to change the total reimbursables from \$24,232.08 to \$9,133.32.

**Article 3.** This amendment shall be retroactive to July 31, 2007.

**Article 4.** Except as specifically set forth herein, all terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made and executed this Agreement as of the day and year first written above.

**COUNTY:**  
PALM BEACH COUNTY, FLORIDA,  
a Political Subdivision  
of the State of Florida  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Addie L. Greene, Chairperson

ATTEST:  
Sharon R. Bock,  
Clerk & Comptroller  
Circuit Court

BY: \_\_\_\_\_  
Deputy Clerk

SEAL

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

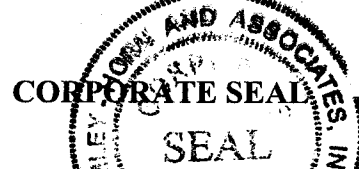
BY: \_\_\_\_\_  
COUNTY ATTORNEY

APPROVED AS TO TERMS  
AND CONDITIONS:

BY:           Dan Nesby            
ENGINEERING DEPARTMENT

**CONSULTANT:**  
KIMLEY-HORN AND  
ASSOCIATES, INC.,  
a Florida Corporation

BY:           Frederick W. Schwartz            
Frederick W. Schwartz, P.E.  
Senior Vice President



WITNESS:  
BY:           Lisa A. Milan            
LISA A. MILAN  
(Printed Name)

BY:           Sharda Dunne            
SHARDA DUNNE  
(Printed Name)

**STANDARD FORM  
AGREEMENT FOR PROFESSIONAL SERVICES  
ENGINEERING SERVICES  
BETWEEN  
PALM BEACH COUNTY AND CONSULTANT**

This is an Agreement made as of JUL 13 2004, 2004, between **PALM BEACH COUNTY, FLORIDA (COUNTY)** and **Kimley-Horn and Associates, Inc. (CONSULTANT)**, a Engineering firm having an office and a place of business at 4431 Embarcadero Drive, *West Palm Beach, Florida 33407, and having Federal Tax ID #56-0885615*. The COUNTY intends to have the Consultant provide the Palm Beach County Traffic Division with a Traffic Performance Standards database that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County (hereinafter called the PROJECT).

The COUNTY and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by CONSULTANT and the payment for those services by COUNTY as set forth below.

**SECTION 1 - BASIC SERVICES OF CONSULTANT**

**1.1 General**

1.1.1. The CONSULTANT shall develop a data base that will provide traffic projections from approved development projects on all major roadway links within Palm Beach County as more specifically set forth in the Scope of Work detailed in Exhibit A

The data base shall provide the following on a year by year basis:

1. Traffic from approved but un-built projects.
2. Adjustments of "double counting"(adjustments between attraction and productions) .
3. Adjustments for background growth.
4. Current traffic counts.

1.1.2. The outputs from the data base shall include:

1. Two-way peak hour, peak season traffic for the AM and PM peak hours.
2. Directional peak hour, peak season traffic for the AM and PM peak hours.
3. Intersection turning movement counts.

1.1.3. The CONSULTANT has, during the selection and negotiation process which has preceded this agreement, represented to the COUNTY that the CONSULTANT is possessed of that level of skill, knowledge, experience and expertise that is commensurate with engineering firms of national repute in the areas of practice required for this project. The CONSULTANT acknowledges that the COUNTY has relied on the CONSULTANT'S representations of skill, knowledge, experience and expertise. By executing this contract, the CONSULTANT agrees that the CONSULTANT will exercise that degree of care, knowledge, skill and ability as other engineering firms possessing the degree of skill, knowledge, experience and expertise which the CONSULTANT has claimed. The CONSULTANT shall perform such duties as may be assigned without neglect. The CONSULTANT accepts the relationship of trust and confidence established by this Agreement, and covenants with the COUNTY to cooperate with the COUNTY and to utilize the CONSULTANT'S skill, efforts and judgment commensurate with engineering firms of national repute in the

areas of practice required for this project. The **CONSULTANT** agrees to perform each assignment in an efficient and economical manner consistent with the **COUNTY'S** interests and consistent with the **COUNTY'S** stated objectives and recognized professional engineering standards.

The **CONSULTANT** further contracts with the **COUNTY** to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Agreement first written. It is specifically understood that the Accessibility provisions of the Americans with Disabilities Act (ADA) shall be complied with and incorporated into the project.

## **SECTION 2 - COUNTY'S RESPONSIBILITY**

**COUNTY** shall provide the following in a timely manner so as not to delay the services of **CONSULTANT**.

- 2.1. Requested traffic reports for approved developments, when available.
- 2.2. All available roadway link volumes.
- 2.3. All available intersection turning volumes.

### **SECTION 3 - PERIODS OF SERVICE**

**3.1. This is an Agreement for specific professional engineering services as outlined in the Scope of Work detailed in Exhibit A. This Agreement will commence on the day and year first written above and shall remain in effect until the completion of the work outlined in the Scope of Work detailed in Exhibit A. Work on this contract shall be completed by December 31, 2005.**

### **SECTION 4 - PAYMENTS TO CONSULTANT**

**4.1. Methods of Payment for Services and Expenses of CONSULTANT.**

**4.1.1 Basic Service: The COUNTY will pay the CONSULTANT a total labor fee of \$264,000 for the scope detailed in Exhibit 'A' based on the Fee Schedule detailed in Exhibit B.**

**4.1.2 4.1.2. Reimbursable expenses: The COUNTY will pay the CONSULTANT the actual costs of all reimbursable expenses incurred in the provision of these services when authorized in writing by the COUNTY. The payment reimbursable expenses shall not exceed estimated costs, as detailed in the fee Schedule in Exhibit B. No reimbursable expenses will be incurred without additional authorization from the COUNTY.**

**4.1.3. Additional services and reimbursable expenses authorizations shall be issued in accordance with Board policy per Resolution Number R-89-633 adopted April 4, 1989.**

**4.2. Payments**

**4.2.1. Payments to the CONSULTANT shall be due and payable monthly in proportion to the percentage Task completed as approved and accepted by the COUNTY.**

**4.3. Other Provisions Concerning Payments**

**4.3.1. Records of CONSULTANT'S Salary Costs pertinent to CONSULTANT'S compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the COUNTY on request prior to final payment for CONSULTANT'S services.**

### **SECTION 5 - GENERAL CONSIDERATION**

**5.1. Termination**

This Agreement may be canceled by the CONSULTANT upon thirty (30) days prior written notice to the COUNTY'S representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY with or without cause, immediately upon written notice to the CONSULTANT. Upon any such termination, the CONSULTANT hereby waives any claims for damages from such termination, including, but not limited to, loss of anticipated profits, on account thereof. Unless the CONSULTANT is in breach of this Agreement, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination plus reasonable close out costs. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

A. Stop work on the date and to the extent specified.

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- B. Terminate and settle all orders and subcontractors relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

5.2. **Disclosure and Ownership of Documents**

5.2.1. Upon completion and acceptance of the final work, the CONSULTANT shall furnish to the COUNTY, the original drawings, field notes and all documents and materials prepared by and for the COUNTY under this Agreement. The CONSULTANT may keep a reproducible set of the original drawings and shall keep all other data collected during the provision of the services. The COUNTY may, at its expense, obtain copies of any data which the CONSULTANT has accumulated in the process of providing the services on this Project.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the COUNTY'S sole risk and without liability or legal exposure to the CONSULTANT.

5.2.2. All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased, under this Agreement at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

5.2.3. Notwithstanding any other provision to the contrary in this agreement, the COUNTY and the CONSULTANT shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

5.2.4. All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

5.3. **Insurance**

5.3.1. The CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the COUNTY.

5.3.2. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the COUNTY'S representative. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this paragraph and that no cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY'S representative. Compliance with the foregoing requirement shall not relieve the CONSULTANT of its liability and obligations under this Agreement.

5.3.3. The CONSULTANT shall maintain, during the term of this Agreement, standard Professional Liability Insurance in the minimum amount of \$1,000,000 per claim..

5.3.4. Insurance and Indemnification - The CONSULTANT shall maintain Professional Liability insurance covering the CONSULTANT for sums which the CONSULTANT shall become legally obligated to pay as damages because of liability arising out of negligence, error or omission the professional services required in the